



Bristol City Council

Call in of a decision taken by the Executive

Overview and Scrutiny Rule OSR17 states that where **non-executive councillors** have evidence which suggests that the executive did not take the decision in accordance with Article 14 (Decision Making) of part 2 of the Council's Constitution, at least **five non-executive members** may ask the proper officer to call-in a decision for scrutiny using the appropriate call-in form (attached). The decision making principles in article 14 are set out below and the members seeking the call-in should identify those principles in Article 14 of the Constitution which they believe have been breached.

Proportionality	The action must be proportionate to the desired outcome.
Due consultation	(a) It may be appropriate to consult with communities, businesses and other third parties who have an interest in the matter. In some cases minimum consultation requirements are prescribed in law. (b) The council is required to act in the interests of the public as a whole so the decision desired by consultees may not necessarily be the right decision to make.
Taking of professional advice from others	Professional advice from the council's legal, financial and other specialist staff is always essential for the executive.
Respect for human rights	The Human Rights Act 1998 is of great importance to local authorities. Any decision which may breach an article or protocol of the Act should be subjected to "anxious scrutiny" and professional advice sought.
A presumption in favour of openness	Decisions taken by executive members or officers should be taken under this presumption. Access to material contributing to a decision should be made available to anyone with a legitimate interest in it unless this would involve disclosing exempt or confidential information
Clarity of aims and desired outcomes	Decision makers must be clear as to what they are seeking to achieve and why. This will often require thoughtful consideration of other options.
Due regard to public sector equality aims	The Equalities Act 2010 requires that all decisions taken must have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct which is prohibited under the Act; (b) advance equality of opportunity between equality groups and (c) foster good relations between equality groups.

Procedure

1. Where a decision is made by the executive or a key decision is made by an officer with delegated authority from the executive, or under joint arrangements the decision will come into force, and may then be implemented on the expiry of five clear working days from the date the decision was taken unless the decision is called-in. The 5 clear working days run from 8.30am on the day **after** the decision was taken and exclude any day when the Council's offices are shut - i.e. weekends and bank holidays.

2. The proper officer will first satisfy themselves that the following requirements have been met:
- (i) the call-in notice has been received within the prescribed timescales
 - (ii) the decision taker's decision has been properly identified and described
 - (iii) the members seeking the call-in have identified those principles of Article 14 of the constitution which they believe have been breached.
3. If the requirements are met the proper officer will call-in the item and within five working days of the request, give notice as to the date on which the call-in will be considered by a Call-In Sub Committee, which will be held within 10 days of the request for call-in being approved by the Proper Officer. If a debate at Full Council is decided by the Call-In Sub-Committee then this will be held within ten days at an extraordinary meeting of the full Council or at the Lord Mayor's discretion.

The following points relate to established working practice in relation to call in:

- The call-in procedure should not be abused or used to unduly delay decisions or slow down the process of decision making
- Members should try to avoid calling in matters which are already within the agreed work programme of a scrutiny commission
- To give notice of a call in, councillors **must use** the form attached to these notes. It should be detached and completed and **send to the Proper Officer (i.e. Tim O'Gara, Director – Legal and Democratic Services.)** Members are strongly recommended to deliver their notice in person, or to email the form
- The form must be filled in fully - members must explain in detail how in their view, the decision taken breaches any of the principles in Article 14 of the Constitution. They must also be meticulous in identifying which part of any executive decision they are referring to. Failure to do so could result in the suspension of a complex decision, when in fact the callers in only wish to object to a small part of it.
- The Proper Officer will review all call ins and may reject or refer back to members, any call in notice which does not fully meet the requirements specified in the Constitution

Early submission of a call in is advised. This will maximise the time available to the executive to formulate a response and for arrangements to be made for appropriate representatives of an executive to attend the Call In Panel which will discuss the decision called in.

Bristol City Council

Request to the Proper Officer to call in an Executive Decision

This form should only be completed after the accompanying guidance notes have been read. It should be completed fully in order that the Proper Officer has an adequate basis upon which to call in the decision.

Please return the call-in form to Tim O’Gara, Proper Officer

Email tim.ogara@bristol.gov.uk

Names of the non-executive members requesting the proper officer to call the decision in :	Cllr Gary Hopkins Cllr Tim Kent Cllr Tony Carey Cllr Graham Morris Cllr Richard Eddy
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Date and time request submitted :	12 th February 2020 @ 13.40
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Details of Executive (or officer acting under delegated power)	Cabinet lead: Cllr Cheney
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Decision number and date	Date: Tuesday, 4th February, 2020 4.00 pm 15. Temple Island - scheme content and development agreement
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Description of decision or part of decision <i>(if you only quote the subject then everything in the decision could be suspended pending the Call In Sub meeting)</i>	Decision: Cabinet approved: 1. The Council entering into conditional agreements and an agreement for lease with Legal & General, based on the principles set out in the Heads of Terms contained within the exempt Appendix I. Cabinet authorised: 2. The Executive Director for Growth and Regeneration, in consultation with the Deputy Mayor Finance Governance and Performance, the S.151 Officer, and Director of Legal Services to finalise the terms and conclude all necessary legal agreements between the parties. Cabinet approved: 3. The allocation of £2m to the G&R Directorate to support the development of the project in line with the financial Appendix G –
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	<p>including further site investigation and scheme development work, whilst funding is sought to deliver the full extent of enabling works.</p> <p>4. the repurposing of EDF funding as per Appendix G, and the development and submission of funding applications of up to £32m to WoE LEP to enable BCC to implement enabling works to support the delivery of the Temple Island mixed use scheme and subject to Joint Committee approve and acceptance of the award incorporated into the council's capital programme.</p> <p>Cabinet noted:</p> <p>5. The proposed Memorandum of Understanding between the Council and L&G (at Appendix A.2) to support broader joint working within the TQEZ.</p> <p>6. Officers will keep the G&R scrutiny Commission informed and updated regarding the progress of the overall scheme.</p>
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<p>State which principle(s) in Article14 of the Constitution you believe the executive has breached and set out any evidence to support this.</p>	<p>Submission for Call-In of The Temple/Arena Island Site.</p> <p>The fundamental problem is that the administration having made the decision to kill off the previous plans for this site in secret then had to deliver a replacement. Until something else was in place the calls for the resurrection of the arena plans ,which were almost complete when the present mayor came to power pledging to deliver them to completion.</p> <p>The decision making process was not therefore as stated to take a derelict undevelopable site and do something but in practice to stop development and come up with something.</p> <p>With the attractions of the site and the terms available we could have expected a number of potential investors. Instead we have finished up with one and of course they have been insiders all the way through this process.</p> <p>The decision not to go out to competition has been fatal and led to the many contradictions within the report. There is bluntly no certainty of delivery of anything and Legal & General get considerable rights without any obligations.</p> <p>It is admitted that if we were to attempt to put specific requirements into the deal it would immediately become illegal. So there is no certainty of a single flat or a hotel or conference centre.</p> <p>This simply does not do what it says on the Mayors tin.</p> <p>Let us look at some of the areas of failure of this report (whoever wrote it and when) and the decision taken.</p>
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Taking of professional advice

The advice that has not been redacted is full of caveats. The process walks a tightrope between the different pieces of legislation. What is very clear from all of the advice is that there is no obligation on Legal & General to do anything. Given the language that has been used the mayor either does not understand this or is misrepresenting the situation. Clearly we need to get clarity on this because it is vital that everyone involved in the process understands the legal position.

It is clear that there is a legal requirement to demonstrate best value and that has not happened.

Despite the wooliness of the agreement the legal advice is for the publication of a VEAT. This has not happened.

Due consultation

You will note from the cover sheet with this report no reference to Scrutiny. Given the scale and importance of this that is a staggering position. The report was produced late and Scrutiny did not have what any reasonable person would regard as a proper opportunity to examine and consider. It is certainly highly possible that other parties with funds to invest would want to be involved but of course the secrecy followed by the very short partial exposure has precluded that. The Bristol public on whose behalf the council is supposed to act have been excluded on one of the most important decisions involving huge amounts of public money and assets.

A presumption in favour of openness

Because of technical failures the media had access to un-redacted information. Leaving aside any figures involved, some of the redactions seem very clearly to have been made to avoid embarrassment rather than to protect commercially sensitive numbers. There has been a misportrayal of this arrangement that is the very opposite of openness. It is clear that the secret dealings were a part of the arena cancellation but no information was made public.

Proportionality

This is not demonstrated. We see a heads of terms that is admitted places no obligation on I and G at all but gives them rights. We propose to give a completely unconditional long lease after spending millions of pounds of public money preparing the site. None of this is proposed to be under democratic control as all the decisions are delegated. What happens if and when I and G decide they want to build something completely different to that desired by the present or future administration. We are powerless as a democratic body accountable to the public.

It is important when scrutinising a deal to not just listen to the salesmen that are paid to promote it but to check if there are

caveats on the supporting “advice” and also to check on what other parties are getting out of this and if that means we are losing out and if therefore we should consider an alternative way forward.
The legislation in place that this arrangement partly skirts around is there for a purpose.

It seeks to prevent either:

A. Corruption.

B. Poor decision making that puts public money at risk.

Read the caveats in the expensively paid for reports, if you are allowed to, and consider why they are there. Do they give us absolute protection or not? Do they allow the “professionals” to avoid responsibility if this all goes wrong for taxpayers?

Crucially, were we given full access and time to test and check matters and assertions or were they flashed in front of a limited number of Cllrs who were restricted?

Even more telling is to look at what Legal and General get from this arrangement. If they are getting everything they want we are missing out. They, after all, are not skilled builders but merely in control of a pot of money that could be obtained by other methods. Nobody is able to borrow more cheaply than a public body like a council.

The money invested here by Legal and General is annuity funds. They have a legal duty to maximise the return on these funds on behalf of their pensioners and crucially where they put this money must be a long term safe investment with absolute minimal risk.

Typically this was always put into loans to government but the returns on that are very poor so what will they be looking for and are the Bristol taxpayers giving it to them at potential cost to themselves?

What are the specifics?

- A property investment in a prime location next to the railway station in a boom city **TICK**
- As a bonus in an enterprise zone **TICK**
- Have large amounts of public money spent on preparing the site **TICK**
- Have a hugely long lease granted (250 years) **TICK**
- Have no conditions on the lease so we can build what we want later **TICK**
- Have no contracted deal that the council could enforce **TICK**
- Have a council administration that is desperate to look like it is delivering something **TICK**
- Remove any competition so that we do not spend money competing **TICK**
- In case what we build first is not commercially viable then have the council prepared to pay the rent **TICK**
- Be able to keep it all secret from the public **TICK**
- Put the council planning committee over a barrel with regard

to granting what we want and avoiding national investigation.

TICK

A good report supporting a good decision will detail the alternative proposal considered and why they were not proceeded with. Does this one?

Clarity of aims and desired objectives.

The very fact that this has not gone through competitive tendering absolutely precludes clarity of aims and desired outcomes. As a council we have democratic duties which are completely ignored. Legal & General are a commercial organisation, who are good at making money. That is in potential conflict with what the council on behalf of the Bristol public might want. There is nothing we could do about it.

There is also concern about the pressure that would be placed upon any planning committee. By having land G submit the application rather than ourselves BCC can technically decide the outcome but of course there will be significant financial interest to the council leaving open the possibility of challenge.

Signed by Councillors

